TITLE 16
JUVENILE PROCEEDINGS

CHAPTER 24
CHILDREN'S MENTAL HEALTH SERVICES

16-2401. SHORT TITLE. This chapter governing the access to the continuum of services for children with serious emotional disturbance may be cited as the "Children's Mental Health Services Act."

[16-2401, added 1997, ch. 404, sec. 1, p. 1282.]

16-2402. LEGISLATIVE PURPOSES. (1) It is the policy of the legislature and the state of Idaho that services for children with serious emotional disturbance should be planned and implemented to maximize the support of the family's ability to provide adequate safety and well-being for the child at home. If the child cannot receive adequate services within the family home to maintain individual safety and well-being, community resources shall be provided to minimize the need for institutional or other residential placement. The legislature finds that family involvement and participation in the child's treatment planning and implementation is vital to successful intervention for children with serious emotional disturbance.

(2) Services to address mental health needs are one part of a broad array of services which should be available to Idaho's children with special needs. Such services shall maximize the preservation of the family, by coordination and collaboration of services with schools and community. The department of health and welfare, the department of education, the department of juvenile corrections, school districts, counties and any other appropriate entities, shall cooperate and collaborate in planning, developing and providing services, and shall consult with counties and private providers of mental health services.

(3) Services shall be individually planned to meet the unique needs of each child and family. Such planning shall include the parent, guardian or surrogate parent(s) of each child. The continuum of services shall include, but not be limited to, individual and family counseling, crisis intervention services, day treatment, respite care, therapeutic foster homes, family support services, residential treatment and inpatient services. These services shall be available to meet the needs of Idaho's children with serious emotional disturbance or mental illness and their families. Services shall be provided without requiring that parents relinquish custody of the child.

(4) This chapter is intended to achieve, and shall be construed to promote, these legislative purposes:

(a) To empower families of children with serious emotional disturbance to determine their own needs and to make decisions and choices, concerning them;

(b) To give families of children with serious emotional disturbance the support they need, to maintain a stable, nurturing home environment for the children, and to respond to the needs of the entire family, without requiring families to accept services that they do not desire or seek;

(c) To utilize out-of-home placement only after families are provided supportive services and those services are inadequate to provide a reasonable level of safety and well-being for the child and family, or when an emergency exists which requires immediate intervention. Any

placement of a child out of home shall follow the principles of least restrictive alternative placement as defined in this chapter and shall be for the shortest period of time necessary to provide for the safety and well-being of the child and family;

(d) To plan, develop, deliver, and evaluate services for children with serious emotional disturbance in an efficient, coordinated and collaborative statewide system, of individualized services;

(e) To provide services in settings that are close to the patterns and norms of society and sensitive to the regional, cultural, and ethnic characteristics of Idaho's families and communities;

(f) To provide services for families as close to their home communities as possible and to promote integration of families into their communities;

(g) To make use of the capacities of local communities to complement existing public and private community resources, including natural and informal supports provided by family and friends;

(h) To give priority to planning, developing, implementing, and evaluating children's mental health services to prevent, ameliorate, or reduce the impact of serious emotional disturbance on families;

(i) To assist all state and local public and private agencies and service providers to provide appropriate, flexible, and cost-effective home and community-based services for families;

(j) All state agencies providing services to children with serious emotional disturbances prior to the passage of this chapter shall maintain their existing level of services to this population.

(5) All department and private providers acting under this chapter shall:

(a) Identify and coordinate all available resources, both formal and informal, public and private, so that the needs of families can be met and their strengths can be applied;

(b) Include participation of families with children with serious emotional disturbance in all phases of planning, developing, implementing, and evaluating the programs that affect them;

(c) Be flexible, so that families will have power to decide what services to use, how to use them, and how often to use them;

(d) Apply a family centered approach in working with families;

(e) Respect a family's method of problem solving and their preferred methods of communication;

(f) Be sensitive to families' social, economic, physical and other environments;

(g) Disseminate information so that eligible families will know of the availability of services;

(h) Provide services in a manner to ensure uninterrupted and consistent availability of services between children's and adult services when the child reaches the age of majority;

(i) Refrain from any discrimination on the basis of race, gender, religion, ethnicity, national origin, or disabling condition in the employment of individuals, and in providing services.

[16-2402, added 1997, ch. 404, sec. 1, p. 1282.]

16-2403. DEFINITIONS. As used in this chapter:

(1) "Child" means an individual less than eighteen (18) years of age and not emancipated by either marriage or legal proceeding.

(2) "Consistent with the least restrictive alternative principle" means that services are delivered in the setting that places the fewest restrictions on the personal liberty of the child and that provides the greatest integration with individuals who do not have disabilities, in typical and age-appropriate school, community and family environments, which is consistent with safe, effective and cost-effective treatment for the child and family.

(3) "Department" means the department of health and welfare.

(4) "Designated examiner" means a psychiatrist, psychologist, psychiatric nurse, or social worker and such other mental health professionals as may be designated in accordance with rules promulgated pursuant to the provisions of chapter 52, title 67, Idaho Code, by the department of health and welfare. Any person designated by the department director will be specially qualified by training and experience in the diagnosis and treatment of mental or mentally related illnesses or conditions.

(5) "Director" means the director of the state department of health and welfare.

(6) "Emergency" means a situation in which the child's condition, as evidenced by recent behavior, poses a significant threat to the health or safety of the child, his family or others, or poses a serious risk of substantial deterioration in the child's condition which cannot be eliminated by the use of supportive services or intervention by the child's parents, or mental health professionals, and treatment in the community while the child remains in his family home.

(7) "Informed consent to treatment" means a knowing and voluntary decision to undergo a specific course of treatment, evidenced in writing, and made by an emancipated child, or a child's parent, or guardian, who has the capacity to make an informed decision, after the staff of the facility or other provider of treatment has explained the nature and effects of the proposed treatment.

(8) "Involuntary treatment" means treatment, services and placement of children provided without consent of the parent of a child, under the authority of a court order obtained pursuant to this chapter, as directed by an order of disposition issued by a designated employee of the department of health and welfare under section 16-2415, Idaho Code.

(9) "Lacks capacity to make an informed decision concerning treatment" means that the parent is unable to understand the nature and effects of hospitalization or treatment, or is unable to engage in a rational decision-making process regarding such hospitalization or treatment, as evidenced by an inability to weigh the risks and benefits, despite conscientious efforts to explain them in terms that the parent can understand.

(10) "Likely to cause harm to himself or to suffer substantial mental or physical deterioration" means that, as evidenced by recent behavior, the child:

(a) Is likely in the near future to inflict substantial physical injury upon himself;

(b) Is likely to suffer significant deprivation of basic needs such as food, clothing, shelter, health or safety; or

(c) Will suffer a substantial increase or persistence of symptoms of mental illness or serious emotional disturbance which is likely to result in an inability to function in the community without risk to his safety or well-being or the safety or well-being of others, and which

cannot be treated adequately with available home and community-based outpatient services.

(11) "Likely to cause harm to others" means that, as evidenced by recent behavior causing, attempting, or threatening such harm with the apparent ability to complete the act, a child is likely to cause physical injury or physical abuse to another person.

(12) "Protection and advocacy system" means the agency designated by the governor as the state protection and advocacy system pursuant to 42 U.S.C. 6042 and 42 U.S.C. 10801 et seq.

(13) "Serious emotional disturbance" means a diagnostic and statistical manual of mental disorders (DSM) diagnosable mental health, emotional or behavioral disorder, or a neuropsychiatric condition which results in a serious disability, and which requires sustained treatment interventions, and causes the child's functioning to be impaired in thought, perception, affect or behavior. A disorder shall be considered to "result in a serious disability" if it causes substantial impairment of functioning in family, school or community that is measured by and documented through the use of a standardized instrument approved by the department and conducted or supervised by a qualified clinician. A substance abuse disorder does not, by itself, constitute a serious emotional disturbance, although it may coexist with serious emotional disturbance.

(14) "Special therapy" means any treatment modality used to treat children with serious emotional disturbances which is subject to restrictions or special conditions imposed by the department of health and welfare rules.

(15) "Surrogate parent" means any person appointed to act in the place of the parent of a child for purposes of developing an individual education program under the authority of the individuals with disabilities education act, 20 U.S.C. 1400 et seq., as amended.

(16) "Teens at risk" means individuals attending Idaho secondary public schools who have been identified as expressing or exhibiting indications of depression, suicidal inclination, emotional trauma, substance abuse or other behaviors or symptoms that indicate the existence of, or that may lead to, the development of mental illness or substance abuse.

(17) "Treatment facility" means a facility or program meeting applicable licensing standards that has been approved for the provisions of services under this chapter by the department of health and welfare.

[16-2403, added 1997, ch. 404, sec. 1, p. 1284; am. 2003, ch. 249, sec. 1, p. 642; am. 2007, ch. 309, sec. 1, p. 870; am. 2008, ch. 219, sec. 1, p. 678; am. 2019, ch. 46, sec. 1, p. 126.]

16-2404. COMMUNITY SERVICES AND SUPPORTS AND INTERAGENCY COLLABORATION. (1) Lead agency. The department of health and welfare shall be the lead agency in establishing and coordinating community supports, services and treatment for children with serious emotional disturbance and their families, utilizing public and private resources available in the child's community. Such resources shall be utilized to provide services consistent with the least restrictive alternative principle, to assist the child's family to care for the child in his home and community whenever possible. The state department of education shall be the lead agency for educational services.

(2) Planning. The department of health and welfare, the state department of education, the department of juvenile corrections, counties, and local school districts shall collaborate and cooperate in planning and

developing comprehensive mental health services and individual treatment and service plans for children with serious emotional disturbance making the best use of public and private resources to provide or obtain needed services and treatment.

(3) Teens at risk. The department of health and welfare, the state department of education, the department of juvenile corrections, counties, courts and local school districts may collaborate and cooperate in planning and developing mental health counseling, substance abuse treatment and recovery support services and individual service plans for teens at risk.

(4) Contracting. The department of health and welfare shall also have the authority to enter into contracts with school districts to provide teen early intervention specialists as provided for in section 16-2404A, Idaho Code.

[16-2404, added 1997, ch. 404, sec. 1, p. 1285; am. 2007, ch. 309, sec. 2, p. 872.]

16-2404A. TEEN EARLY INTERVENTION MENTAL HEALTH AND SUBSTANCE ABUSE SPECIALIST PROGRAM. (1) The department of health and welfare shall be authorized to contract for teen early intervention specialists to work with teens at risk and their families in school districts.

(2) The teen early intervention specialist shall be a certified counselor or a social worker with a clinical background in mental health or substance abuse as prescribed by the department of health and welfare by rule.

(3) The salary paid to the teen early intervention specialist shall be equivalent to the salary paid to comparably trained and experienced individuals employed by the school district in the region in which the community resource is employed.

(4) Teen early intervention specialists shall work with individual teens at risk to offer group counseling, recovery support, suicide prevention and other mental health and substance abuse counseling services to teens as needed, regardless of mental health diagnosis.

(5) By permission of school administrators, as prescribed in rule, teens at risk not currently enrolled in a public school may, if assigned by a judge, participate in group or individual teen early intervention specialist counseling sessions or services for teens at risk as appropriate.

(6) School districts seeking to have one (1) or more teen early intervention specialists placed within its district may apply to the department of health and welfare for such placement. The department of health and welfare shall establish by rule a simple application process and criteria for placement of teen early intervention specialists in districts. The number of teen early intervention specialists placed in school districts in any given year shall be limited by the funds appropriated to the teen early intervention specialist program in that fiscal year. In evaluating applications for the three (3) year pilot project, the department of health and welfare shall give special consideration to rural districts and shall consider:

(a) The demonstrated need for mental health and substance abuse counseling and treatment for teens at risk in the school district;

(b) The resources and cooperation which the school district has proposed to contribute to the support of the teen early intervention specialist program for teens at risk; and

(c) The funding appropriated to the teen early intervention specialist program for teens at risk.

(7) Through an initial three (3) year period beginning at the start of the 2008 school year, the department of health and welfare shall work with local school districts where teen early intervention specialists have been placed to gather data on the effectiveness of this program. This data may be gathered and tracked through cooperative projects with Idaho colleges and universities and may include, but not be limited to:

(a) Impacts on the number and nature of teen arrests;

(b) Reductions in the number of teen suicides and suicide attempts;

(c) Changes in patterns of teen incarceration or involvement with Idaho's juvenile justice system;

(d) Impacts on local caseloads of practitioners in the department of health and welfare;

(e) Where applicable, impacts to juvenile mental health or drug courts;

(f) Changes in academic achievement by teens at risk and by those participating in the teen early intervention specialist program; and

(g) Changes in the number and nature of student disciplinary actions in schools where teen early intervention specialists have been placed.

[16-2404A, added 2007, ch. 309, sec. 3, p. 872.]

16-2405. CHARGES TO PARENTS. Parents may be charged for services provided to their children by the department according to the sliding fee scale authorized by section 16-2433, Idaho Code, provided that all services which are part of the child's free appropriate public education as defined in the individuals with disabilities education act, 20 U.S.C. 1400 et seq., as amended, shall be provided to the child at no cost to the parents.

[16-2405, added 1997, ch. 404, sec. 1, p. 1286.]

16-2406. ACCESS TO SERVICES. Access to services for children with serious emotional disturbance and their families shall be voluntary whenever informed consent can be obtained. Involuntary treatment or commitment to the department's custody shall not be required as a condition for obtaining, providing, or paying for treatment by the department. The department's assistance with paying for a child's treatment and other services under this chapter shall be based upon the rules adopted by the department and by the sliding fee scale developed under section 16-2433, Idaho Code. Department payments to service providers are only made pursuant to a written agreement between the department and the service provider. The agreement must reflect cost-effective services for the child.

(1) The family and the department may enter into a services agreement if:

(a) The child meets the department's eligibility criteria for treatment or services; and

(b) The child and his parents request mental health services from the department; or

(c) The family requests full or partial payment for services by the department (other than payment through medical assistance, title XIX of the social security act, as amended); or

(d) The youth is involuntarily placed by the department under this chapter.

(2) For purposes of this chapter, a services agreement is a written agreement, binding on the parties, which specifies at a minimum:

(a) The legal status of the child; and

(b) The rights and obligations of the parents or guardians, the child and the department while the child is in the out-of-home placement.

(3) When a child is placed out of his home pursuant to a services agreement or a one hundred twenty (120) day involuntary treatment order by the court, the department shall have the responsibility for the child's placement and care. The financial obligation of the family will be determined after consideration of all available payment and funding sources including title XIX of the social security act, as amended, all available third party sources, and parent resources according to any order for child support under chapter 10, title 32, Idaho Code. Services shall not be conditioned on transfer of custody or parental rights.

[16-2406, added 1997, ch. 404, sec. 1, p. 1286; am. 2005, ch. 307, sec. 1, p. 956.]

16-2407. VOLUNTARY ADMISSION TO HOSPITAL OR RESIDENTIAL TREATMENT FACILITY. When the department provides services under this chapter, such services shall be provided on a voluntary basis whenever informed consent can be obtained, and the department shall ensure that services made available to children subject to involuntary treatment orders are also available on a comparable basis to children seeking services on a voluntary basis.

(1) Admission of children. A treatment facility may admit a child after examining the child and interviewing the family, if a clinician with authority to admit patients to the facility determines that the child is seriously emotionally disturbed and is in need of hospitalization or residential services and, the child's parent, custodian or guardian give such consent to treatment. Prior to such admission, the child and his parent, custodian or guardian shall be advised orally and given a written statement of his rights under this chapter as provided in section 16-2426, Idaho Code, provided that, if the condition of the child is such that notice and advice of his rights would be ineffective, and this determination is recorded in the child's record, such advice to the child may be deferred until the child's mental and emotional condition permits, but for no more than forty-eight (48) hours. Each child and parent shall be asked to sign an acknowledgment that they have been so advised, and this acknowledgment shall be kept in the child's record.

(2) A child shall not be voluntarily admitted to a facility operated by the department unless evaluated and referred by a person on the staff of the regional family and children's services program.

(3) When a child is in a voluntary, out-of-home placement which is funded in whole or in part by state or federal funds, the department may have the propriety of the placement reviewed by the district court of the county in which the child is placed or the county of the child's residence every one hundred eighty (180) days after placement or as required by statutes which govern federal funding for children who are placed out of their homes.

[16-2407, added 1997, ch. 404, sec. 1, p. 1286.]

16-2408. DISCHARGE OR PETITION FOR ONE HUNDRED TWENTY DAY TREATMENT ORDER. Any child who is voluntarily admitted to a treatment facility upon the consent of his parents or guardian shall be discharged within three (3) business days of a written request for discharge by the consenting person unless such request is withdrawn in writing or there is other legal authority to hold the child at the facility.

[16-2408, added 1997, ch. 404, sec. 1, p. 1287.]

16-2409. CONVERSION FROM INVOLUNTARY TO VOLUNTARY STATUS. Upon approval by the court, a child who is subject to involuntary treatment under this chapter may at any time convert to a voluntary status if informed consent to treatment can be obtained from his parent or guardian. The court shall approve conversion from involuntary to voluntary status if the court finds that:

(1) (a) The child is not likely to cause harm to himself or suffer substantial mental or physical deterioration; and

(b) The child is not likely to cause harm to others; or

(2) The conversion from involuntary to voluntary status is in the best interests of the child and consistent with the requirements of public safety.

[16-2409, added 1997, ch. 404, sec. 1, p. 1287; am. 2005, ch. 307, sec. 2, p. 957.]

16-2410. REVIEW OF VOLUNTARY ADMISSION. A child admitted on the consent of his parents, shall have his admission reviewed at the end of a thirty (30) day period from the initial date of admission to the program. The review shall be accomplished by having the child's treating clinician review the child's treatment and determine whether continued out-of-home treatment at the facility is still necessary and consistent with the least restrictive alternative principle. If the clinician decides that it is, he or she shall record the findings on a form to be filed in the child's record. The facility shall notify the child and his parents at least seven (7) days prior to the thirty (30) day review and give them an opportunity to comment on the need, if any, for continued inpatient or residential treatment. The facility shall ensure that the child and his parents are aware of the right to request discharge as set forth above.

If the facility staff determines that the parent of the child understands these rights and the parent of the child desires to continue treatment, then the facility staff shall so certify on a form designated by the department. These forms shall be kept in the child's patient record, and sent to the child's parent, guardian or custodian. This procedure shall take place every thirty (30) days from the date of the last admission.

[16-2410, added 1997, ch. 404, sec. 1, p. 1287.]

16-2411. EMERGENCY MENTAL HEALTH RESPONSE AND EVALUATION -- TEMPORARY DETENTION BY A PEACE OFFICER OR HEALTH CARE PROFESSIONAL. (1) A peace officer may take a child into protective custody and immediately transport the child to a treatment facility for emergency mental health evaluation in the absence of a court order if and only if the officer determines that an emergency situation exists as defined in this chapter, and the officer has probable cause to believe, based on personal observation and investigation, representation of the child's parents or the recommendation of a mental health professional, that the child is suffering from serious emotional disturbance as a result of which he is likely to cause harm to himself or others or is manifestly unable to preserve his health or safety with the supports and assistance available to him and that immediate detention and treatment is necessary to prevent harm to the child or others.

(2) For purposes of this section, "health care professional" means a physician, physician's assistant or advanced practice registered nurse, any one (1) of whom then is practicing in a hospital. A health care professional may detain a child if such person determines that an emergency situation exists as defined in this chapter, and such person has probable cause to believe that the child is suffering from a serious emotional disturbance as a result of which he is likely to cause harm to himself or others or is manifestly unable to preserve his health or safety with the supports and assistance available to him and that immediate detention and treatment is necessary to prevent harm to the child or others. If the hospital does not have an appropriate facility to provide emergency mental health care, it may cause the child to be transported to an appropriate treatment facility. The health care professional shall notify the parent or legal guardian, if known, as soon as possible and shall document in the patient's chart the efforts to contact the parent or legal guardian. If the parent or legal guardian cannot be located or contacted, the health care professional shall cause a report to be filed as soon as possible and in no case later than twenty-four (24) hours with the Idaho department of health and welfare or an appropriate law enforcement agency. The child may not be detained against the parent or legal guardian's explicit direction unless the child is taken into protective custody pursuant to subsection (1) of this section, except that the child may be detained for a reasonable period of time necessary for a peace officer to be summoned to the hospital to make a determination under subsection (1) of this section.

(3) If a child has been taken into protective custody by a peace officer under the provisions of this section, the officer shall immediately transport the child to a treatment facility or mental health program, such as a regional mental health center, a mobile crisis intervention program, or a therapeutic foster care facility, provided such center's program or facility has been approved by the regional office of the department for that purpose. The department shall make a list of approved facilities available to law enforcement agencies.

(4) Upon taking the child into protective custody or detaining the child pursuant to this section, the officer or health care professional shall take reasonable precautions to safeguard and preserve the personal property of the child unless a parent or guardian or responsible relative is able to do so. Upon presenting a child to a treatment facility, the officer shall inform the staff in writing of the facts that caused him to detain the child and shall specifically state whether the child is otherwise subject to being held for juvenile or criminal offenses.

(5) If the child who is being detained by a peace officer is not released to the child's parent, guardian or custodian, the law enforcement agency shall contact the child's parent, guardian or custodian as soon as possible, and in no case later than twenty-four (24) hours, and shall notify the child's parent, guardian or custodian of his status, location and the reasons for the detention of the child. If the parents cannot be located or contacted, efforts to comply with this section and the reasons for failure to make contact shall be documented in the child's record.

[16-2411, added 1997, ch. 404, sec. 1, p. 1288; am. 2013, ch. 293, sec. 1, p. 770.]

16-2412. EMERGENCY TREATMENT UPON CERTIFICATION BY DESIGNATED EXAMINER. A child may be taken into protective custody by a peace officer, or

accepted by an ambulance service, and transported and presented to a treatment facility for emergency evaluation and treatment when a designated examiner certifies in writing that he has examined the child within the last seventy-two (72) hours and that on such basis he has probable cause to believe that such child is suffering from serious emotional disturbance as a result of which he is likely to:

(1) Harm himself or others; or

(2) Suffer substantial mental or physical deterioration; and

(3) Require immediate treatment to prevent such harm; and

(4) Less restrictive alternatives have been considered and the detention and treatment proposed is consistent with the least restrictive alternative principle.

[16-2412, added 1997, ch. 404, sec. 1, p. 1288.]

16-2413. EMERGENCY ADMISSION AND TREATMENT FACILITY DETERMINATION. Upon the presentation of a child to a treatment facility pursuant to section 16-2411, Idaho Code, the facility shall accept the child and shall promptly examine him to determine whether he meets the criteria for emergency evaluation and treatment set forth below.

(1) The child shall be admitted for emergency evaluation and treatment only if a clinician with authority to admit the child determines that there is probable cause to believe that such child is suffering from serious emotional disturbance as a result of which he is likely to:

(a) Harm himself or others; or

(b) Suffer substantial mental or physical deterioration; or

(c) Cause harm to others and immediate treatment is necessary to prevent such harm; and

(d) Less restrictive alternatives have been considered and the placement and treatment proposed is consistent with the least restrictive alternative principle.

(2) If the examining physician determines that there is not probable cause to believe that the child meets the criteria for emergency evaluation and treatment, the child shall be released to his parents who shall arrange transportation. If the child was presented to the treatment facility by a law enforcement officer and was otherwise subject to detention for a juvenile or criminal offense, he shall remain under the protective custody of the law enforcement officer. The treatment facility shall notify the law enforcement officer and detain the child until law enforcement responds to transport the child to detention.

(3) The treatment facility shall advise any child admitted for emergency evaluation and treatment of the purposes and possible duration of emergency evaluation and of his rights under this chapter as soon after admission as his medical condition permits in the manner prescribed in section 16-2426, Idaho Code.

[16-2413, added 1997, ch. 404, sec. 1, p. 1289.]

16-2414. ORDER FOR EMERGENCY EVALUATION. Each child who is admitted to a treatment facility under section 16-2413, Idaho Code, shall, within twenty-four (24) hours of being taken into protective custody, be released to his parent or guardian, unless a court order authorizing emergency evaluation has been obtained.

(1) The evidence supporting the claim that an emergency exists with respect to the child shall be submitted to a court of competent jurisdiction. If the court finds that an emergency situation exists, it shall issue an order for emergency evaluation, which shall authorize the treatment facility to hold the child for up to forty-eight (48) hours at which time he shall be released to his parent or guardian, unless valid consent to voluntary treatment has been obtained under section 16-2407, Idaho Code, or other legal authority is sought to hold the child.

(2) Each child and parent shall also be informed orally and in writing by the evaluation facility of the purposes and the possible consequences of the proceedings, the allegations in the petition, the child's right to communicate with an attorney, and the right to receive necessary and appropriate treatment.

(3) At all stages of the proceeding the court shall consider whether treatment may be voluntarily obtained by the child and his family. If the treatment can be voluntarily obtained, the petition shall be dismissed.

(4) The court may also order that the prosecuting attorney of the county review the appropriateness of the case for filing a petition under the child protective act or the juvenile corrections act.

(5) A child shall not be admitted under this section to a facility operated by the department unless evaluated and authorized by a staff of the regional family and children's services program.

[16-2414, added 1997, ch. 404, sec. 1, p. 1289.]

16-2415. DISPOSITIONAL AUTHORITY. (1) Whenever the involuntary treatment of the child requires payment from public funds, other than medicaid funds, the department, or other funding agency shall have the authority to determine the placement for the child and to make decisions concerning the purchase and provision of mental health services, consistent with the plan of treatment approved by the court.

(2) When the cost of the child's treatment can be paid from private sources or by medicaid, the parent shall have the authority to determine the child's placement and services, consistent with the plan of treatment approved by the court.

(3) All expenditures under the medicaid program shall be governed by the laws and rules applicable to that program.

(4) The department shall issue a disposition order within two (2) days of the order for involuntary treatment.

[16-2415, added 1997, ch. 404, sec. 1, p. 1290; am. 2005, ch. 307, sec. 3, p. 957.]

16-2416. ONE HUNDRED TWENTY DAY INVOLUNTARY TREATMENT ORDER. (1) Children may be treated involuntarily for a period of up to one hundred twenty (120) days upon a petition filed by the treatment facility or by the parent, guardian, prosecuting attorney or other interested party. The petition shall set forth the facts supporting the allegations and, in the case of petitions filed by a treatment facility, shall describe why the child requires treatment, a detailed description of the symptoms or behaviors of the child that support the allegations in the petition, a list of the names and addresses of any witnesses the petitioner intends to call at the involuntary treatment hearing. The petition shall also contain a statement of the alternatives to court-ordered involuntary treatment that have been consid-

ered and the reasons for rejecting the alternatives. The petition shall be filed with the court and copies shall be served upon the person and upon a parent, the next of kin, guardian or custodian and the person's attorney. The copies of the petition shall be accompanied by a notice advising of the child's rights concerning the proceeding.

(2) Upon filing of a petition for involuntary treatment of a child who is not currently under emergency evaluation or voluntary admission, the court shall issue a summons to the child to submit to an examination by two (2) designated examiners. At least one (1) designated examiner shall be a psychiatrist, licensed physician or licensed psychologist. Each designated examiner shall promptly prepare a report on his examination and file it with the court. Copies shall be promptly served upon the child, parent, custodian, guardian and the child's attorney.

[16-2416, added 1997, ch. 404, sec. 1, p. 1290; am. 2005, ch. 307, sec. 4, p. 957.]

16-2417. HEARING ON THE ONE HUNDRED TWENTY DAY INVOLUNTARY TREATMENT ORDER. (1) Every child for whom a petition for involuntary treatment has been filed, shall be notified by the court sufficiently in advance to be able to prepare for the hearing and shall receive a prompt hearing. For children confined for emergency psychiatric evaluation or currently under voluntary admission, this hearing shall take place within three (3) business days of the filing of the petition.

(2) The child shall be present at the hearing unless the court finds:

(a) That he has knowingly and voluntarily waived such a right after consulting with counsel, and his counsel shall submit a verified written statement to the court explaining the attorney's understanding of the child's intent; or

(b) That because his behavior at the hearing is so disruptive, it cannot reasonably continue in his presence.

Hearings may be held in the treatment facility whenever the child is an inpatient at the time of the hearing.

(3) Any child who is unable to pay for counsel shall have the right to be provided with counsel at public expense to prepare for and represent him at the hearings.

(4) The prosecuting attorney shall represent the interests of the state at the hearing.

(5) The Idaho rules of evidence and the Idaho rules of civil procedure shall be applied so as to facilitate informal, efficient presentation of all relevant, probative evidence and resolution of issues with due regard to the interests of all parties.

(6) The child shall have the right:

(a) To be represented by counsel;

(b) To present evidence, including testimony of a mental health professional of his own choosing;

(c) To cross-examine witnesses;

(d) To a complete record of the proceedings;

(e) To an expeditious appeal of an adverse ruling.

(7) At the conclusion of the hearing, or within one (1) business day thereafter, the court shall make its findings.

(8) The court shall enter an order discharging the child unless it finds by clear and convincing evidence that the child satisfies all criteria for involuntary treatment in section 16-2418, Idaho Code, in which event it

shall enter an involuntary treatment order as provided in section 16-2416, Idaho Code, for evaluation and treatment for a period of no longer than one hundred twenty (120) days.

(9) If at any time during a one hundred twenty (120) day (or any subsequent) period of involuntary treatment, a child is absent without permission, the involuntary treatment order constitutes a continuing authorization and responsibility to the treatment facility and to any law enforcement officer to procure his return.

[16-2417, added 1997, ch. 404, sec. 1, p. 1291.]

16-2418. CRITERIA FOR ONE HUNDRED TWENTY DAY INVOLUNTARY TREATMENT ORDER. (1) A child may be treated involuntarily, and placed at a facility, according to the disposition of the department under section 16-2415, Idaho Code, for a period of up to one hundred twenty (120) days if, after the hearing provided in section 16-2417, Idaho Code, the court determines on the basis of clear and convincing evidence that:

(a) The child is suffering from severe emotional disturbance; and

(b) There is reasonable prospect that his illness is treatable by a facility or program operated by the department or other facility available to the department for treatment of children with serious emotional disturbance; and

(c) A child's parent or guardian refuses or is unable to adequately provide for the treatment of the child consistent with the requirements of public safety; and

(d) As the result of serious emotional disturbance, the child is:

(i) Likely to cause harm to himself or suffer substantial mental or physical deterioration; or

(ii) Likely to cause harm to others.

(2) Within seven (7) days after entry of the order for involuntary commitment, the department of health and welfare shall develop a plan of treatment to be approved by the court which includes:

(a) A proposed placement and projections for aftercare upon completion of treatment;

(b) Specific behavioral goals by which the success of the treatment can be measured; and

(c) Evidence of attempts to involve the patient and the patient's family in the development of the plan.

(3) The plan of treatment shall be consistent with the least restrictive alternative principle.

(4) The court may conduct a review hearing at any time to monitor compliance and to make any significant adjustment from the plan of treatment during the period of involuntary commitment.

[16-2418, added 1997, ch. 404, sec. 1, p. 1292; am. 2005, ch. 307, sec. 5, p. 958.]

16-2419. EFFECT OF INVOLUNTARY TREATMENT ORDERS ON PARENTAL RIGHTS AND CUSTODY. If an order for involuntary treatment is issued, the parents, guardian or custodian of the child will retain all parental rights, including legal custody of the child, or the orders for involuntary treatment and disposition. The department of health and welfare shall acquire physical custody of the child and the right to determine the disposition and placement of the child whenever the placement requires the expenditure of public funds

as provided in section 16-2415, Idaho Code, consistent with the plan of treatment approved by the court.

[16-2419, added 1997, ch. 404, sec. 1, p. 1292; am. 2005, ch. 307, sec. 6, p. 959.]

16-2420. SUCCESSIVE PERIODS OF INVOLUNTARY TREATMENT. Any order for involuntary treatment pursuant to section 16-2416, Idaho Code, may be renewed. At the time of expiration of a one hundred twenty (120) day involuntary treatment order, authority for continued involuntary treatment may be extended for periods of up to one hundred eighty (180) days upon a petition filed with the court by the treatment facility or by the child's parent, or guardian, or other interested party.

(1) The petition shall include a statement why the child still meets the criteria for involuntary treatment, what treatment has been provided and what progress has been made, why a further period of involuntary treatment is warranted, and the identity of any person who has knowledge concerning the case. The petition shall be promptly served upon the child, the child's parent, custodian, or guardian, and the child's attorney.

(2) The child shall be entitled to a hearing before the court on the petition on or before the first business day following expiration of the operative period of involuntary treatment and shall have the same rights to which he was entitled at the initial hearing on involuntary treatment in section 16-2417, Idaho Code.

(3) The court shall order that the child be discharged unless it determines by clear and convincing evidence that:

(a) The child still satisfies the criteria for involuntary treatment; and

(b) That there is a reasonable prospect that a substantial therapeutic purpose would be served by a further period of involuntary treatment.

(4) Additional involuntary treatment orders for periods up to one hundred eighty (180) days each may be ordered in accordance with this section.

[16-2420, added 1997, ch. 404, sec. 1, p. 1292.]

16-2421. WAIVER OF RIGHT TO BE PRESENT AT HEARINGS. A child may waive the right to be present at any hearing to which he is entitled under this section by filing a written waiver that the court finds is knowingly and voluntarily executed by the child. The child's attorney shall consult with him and determine whether the child understands his rights and desires to waive his right to be present at the hearing. The attorney shall then submit a verified written statement to the court explaining the attorney's understanding of the child's intent. By waiving the right to be present at the hearing, the child waives no other rights.

[16-2421, added 1997, ch. 404, sec. 1, p. 1293.]

16-2422. INFORMED CONSENT TO MEDICATION OR OTHER TREATMENT -- PERSONS UNDER VOLUNTARY TREATMENT. (1) A facility may not administer any treatments or medications to a child admitted to the facility as a voluntary patient under section 16-2407, Idaho Code, unless the parent, guardian or custodian of the child has given informed consent to the treatment, except that emergency or medically necessary treatments may be given without informed consent, if

delay in treatment may cause harm to the child, and the parent, guardian, or custodian of the child is not available.

(2) After informed consent has been given, the parent, guardian or custodian of a child may revoke such consent at any time, by clearly communicating such revocation to facility staff. When consent has been revoked, the facility shall promptly discontinue the treatment, provided that a course of treatment may be concluded or phased out where necessary to avoid the harmful effects of abrupt withdrawal. The facility may require the parent, guardian, or custodian to sign a written revocation of consent before discontinuing the treatment.

(3) Except in an emergency situation, the parents of a child being treated voluntarily shall have the right to refuse any and all medications or other treatments. If appropriate medications or treatments are refused, and the facility is unable to care for the child without such treatments, the facility may then discharge the child, with due care for his safety. Neither the facility nor providers shall be held liable. If the child appears to meet the criteria for involuntary treatment as specified in section 16-2418, Idaho Code, the facility may file a petition for involuntary treatment.

[16-2422, added 1997, ch. 404, sec. 1, p. 1293.]

16-2423. INFORMED CONSENT TO MEDICATION OR OTHER TREATMENT -- PERSONS SUBJECT TO INVOLUNTARY OR EMERGENCY TREATMENT. (1) During an emergency evaluation under section 16-2413, Idaho Code, or during a period of involuntary treatment ordered under section 16-2418, Idaho Code, the treatment facility may administer necessary medications or other treatments, except for electroconvulsive treatments, to a child, consistent with good medical practice without the informed consent of the parent of the child, if it is not possible to obtain such consent.

(2) Notwithstanding subsection (1) of this section, a treatment facility shall not administer experimental treatment or any other special therapy except as provided by law or in rules promulgated by the department.

(3) No psychosurgery or electroconvulsive treatment shall be performed on a child, except by order of a court upon a finding that the treatment is necessary to prevent serious harm to the child. Consent of the parent of a child to this treatment without a court order shall be invalid and shall not be a defense against any legal action that might be brought against the provider of the treatment.

(4) Consent for other medical/surgical treatments not intended primarily to treat a child's serious emotional disturbance shall be obtained in accordance with the applicable law.

[16-2423, added 1997, ch. 404, sec. 1, p. 1294; am. 2005, ch. 307, sec. 7, p. 959.]

16-2424. PROVISION OF TREATMENT. (1) Every child subject to an involuntary treatment order under this chapter shall be provided with appropriate treatment in accordance with the least restrictive alternative principle that offers him a realistic prospect of improvement. Children shall be afforded treatment in facilities that conform to the applicable rules of the department, and that are able to adequately care for and treat the persons they serve.

(2) A written individual treatment plan shall be prepared, with the participation of the child (to the extent he is able), his family and any

other persons of his choice, during voluntary admission or emergency psychiatric evaluation or, within seven (7) days of the signing of an order for involuntary treatment. The individual treatment plan shall be approved by the responsible physician, and the course of treatment actually administered shall conform to the plan.

(3) The child's progress in attaining the objectives in the treatment plan shall be noted in his records, and the revisions to the plan shall be made as necessary. The child and the child's parent, custodian, or guardian shall be afforded an opportunity to participate in any substantial revision of the treatment plan.

(4) A copy of the individual treatment plan shall be given to the child, his parents and to any other person designated by him, provided that the responsible physician may preclude disclosure of the individual treatment plan to the child if he states in writing why disclosure would be harmful to the child.

[16-2424, added 1997, ch. 404, sec. 1, p. 1294.]

16-2425. RIGHTS OF CHILDREN IN TREATMENT FACILITIES. (1) Competence. No right of any child shall be denied or reduced solely by the reason of his having been evaluated, or treated under this chapter. A finding of lack of capacity to make an informed decision under this chapter shall not by itself establish lack of competence for any other purpose.

(2) Right to treatment. Children subject to an involuntary treatment order under this chapter shall have the right to treatment to the extent provided in section 16-2424, Idaho Code.

(3) Healthful and humane environment. Every child shall have the right to a healthful and humane environment. Every facility shall provide a clean, safe and comfortable environment in a structure that complies with applicable licensing requirements governing physical facilities, nutrition, health and safety, and medical services, and for aspects of care for which there are no mandatory requirements, consistent with the generally accepted professional standards in Idaho. In addition, every child shall have the right to a humane psychological environment that protects him from harm or abuse, provides reasonable privacy, promotes personal dignity, and provides opportunity for improved functioning.

(4) Leaves of absence. Leaves of absence may be granted in appropriate cases at the discretion of the treatment facility. Police officers are authorized to and shall, at the request of a treatment facility, take into protective custody and return to the treatment facility any child who is subject to an order for involuntary treatment and placed by the department and any child placed by the authority of his parents who leaves without proper authorization or does not return at the end of an authorized leave of absence. The child's parent or guardian shall be notified before any leave of absence occurs and in the event that a child is away without authorization, they shall be notified immediately.

(5) Restraints and seclusion. Every child shall have the right to be free from unnecessary or inappropriate restraints or seclusion consistent with the least restrictive alternative principle. Restraints and seclusion shall be administered only in conformity with rules adopted by the department.

(6) Corporal punishment. Every child shall have the right to be free from corporal punishment.

(7) Nutrition. Every child shall have the right to a nutritionally sound and medically appropriate diet.

(8) Exercise and recreation. Every child shall have reasonable opportunities for physical and outdoor exercise and access to recreational equipment. Reasonable limitations may be set by general rules or, for clinical reasons, in particular cases.

(9) Visitors. Every child shall have the right to receive visitors with reasonable privacy as is consistent with the treatment plan.

(a) Hours during which visitors may be received shall be limited only in the interest of effective treatment and efficiency of the facility and shall be sufficiently flexible to accommodate the individual needs of the child and his visitors.

(b) Notwithstanding the above, each resident has the right to receive visits from his physician, psychologist, clergyman or social worker in private, irrespective of visiting hours, provided that the visitor shows reasonable cause for visiting at times other than normal visiting hours.

(c) A facility may impose conditions on visits and privacy of visits if there is reason to believe that a visitor poses a substantial risk of harm to the child, or others.

(10) Communications. (a) Every child shall have the right to send and receive mail. Reasonable rules governing inspection (but not reading) of incoming mail may be established, provided that they are necessary for substantial health care purposes and that they preserve the child's rights of privacy to the extent compatible with his clinical status.

(b) Every child shall have the right to reasonably private access to telephones, including the right to make long-distance calls to the extent he can arrange for payment for such calls.

(c) A treatment facility shall provide reasonable assistance to children in exercising their communication rights. Reasonable limitations on the use of the mail and telephones may be set by general rules. In cases of personal emergencies when other means of communication are not satisfactory, the child shall be afforded reasonable use of long-distance calls. A child who is indigent shall be furnished writing, postage and telephone facilities without charge.

(11) Practice of religion. Every child shall have the right to practice or refrain from practice of a religion. No child shall be subjected to pressure, rewards or punishments based on his decision to practice or refrain from practice of religion or of any particular religion. The treatment facility is not required to provide special assistance to persons so that they may practice a religion.

(12) Personal possessions. Every child shall have the right to keep, use and store personal possessions and to maintain and use bank accounts and other sources of personal funds, unless precluded from doing so by order of the court. Reasonable limitations may be set by general rules or, for clinical reasons, in particular cases.

(13) Nonretaliation. No child shall be subjected to retaliation or to any adverse change of conditions or treatment because of having asserted his rights.

(14) Access to counsel. A child may at any time have a telephone conversation with or be visited by his lawyer or any employee of his attorney's firm, or a representative of the state protection and advocacy system.

(15) Medication. Each child has the right to be free from unnecessary or excessive medication.

(16) Right to education. A child who is in a treatment facility shall be provided education and training as necessary to encourage and stimulate developmental progress and achievement and as required by state and federal law. In no event shall a child be allowed to remain in a treatment facility for more than ten (10) days without receiving educational services.

[16-2425, added 1997, ch. 404, sec. 1, p. 1294.]

16-2426. NOTIFICATION OF RIGHTS. At the time of admission to a facility, whether the admission is voluntary or involuntary, the facility shall insure that the child is fully informed of his rights in terms that he can understand. This information shall be provided both orally and in writing. Copies of the written explanation of the child's rights and a written, signed acknowledgement by the child and his parent that he has read and understands the rights, shall be kept in the child's records and made available for inspection by representatives of the child and employees of the state protection and advocacy system. A statement of rights shall be posted in a common area of the facility available to residents and plainly visible.

[16-2426, added 1997, ch. 404, sec. 1, p. 1296.]

16-2427. DISCHARGE. (1) The responsible physician shall review periodically whether a child meets the criteria for involuntary treatment, and if he concludes that the person does not meet such criteria, he shall undertake discharge procedures.

(2) Discharge of any child may be delayed for a reasonable period of time in order to arrange transportation or lodging for the child, or for other good cause to protect the safety or well-being of the child.

(3) Involuntary treatment after discharge. A child who has been discharged from emergency evaluation, one hundred twenty (120) day involuntary treatment or a subsequent period of involuntary treatment may be subjected to further involuntary treatment only pursuant to the procedures provided in this chapter and upon a showing of new circumstances warranting such involuntary treatment which were not known at the time of discharge.

(4) Release to outpatient treatment. The responsible physician may, as part of an individual treatment plan for a child who is subject to involuntary treatment, release such child to outpatient treatment upon the condition that, if the child fails to follow through with, or respond acceptably to, such outpatient treatment, he may be returned to inpatient treatment without a court hearing during the effective period of the order, or until he meets the criteria for voluntary treatment or discharge. Within seventy-two (72) hours of his return to the facility, there must be an administrative review to determine if inpatient treatment is necessary. The review hearing must be conducted by the facility director or his designee, a physician, a social worker, psychologist, or nurse. The child and his parent, or guardian shall be given an opportunity to be represented by counsel and to present evidence and testimony.

(5) Habeas corpus. Nothing in this chapter shall limit other legal rights or remedies concerning discharge which a person may have pursuant to law, rule, regulation or policy, including the right to petition for a writ of habeas corpus.

[16-2427, added 1997, ch. 404, sec. 1, p. 1297.]

16-2428. CONFIDENTIALITY AND DISCLOSURE OF INFORMATION. All certificates, applications, records, and reports directly or indirectly identifying a patient or former patient or an individual whose involuntary treatment has been sought under this chapter shall be kept confidential and shall not be disclosed by any person except with the consent of the person identified or his legal guardian, if any, or as disclosure may be necessary to carry out any of the provisions of this chapter, or as a court may direct upon its determination that disclosure is necessary and that failure to make such disclosure would be contrary to public interest.

(1) No person in possession of confidential statements made by a child over the age of fourteen (14) years in the course of treatment may disclose such information to the child's parent or others without the written permission of the child, unless such disclosure is necessary to obtain insurance coverage, to carry out the treatment plan or to prevent harm to the child or others, or unless authorized to disclose such information by order of a court.

(2) The child has the right of access to information regarding his treatment and has the right to have copies of information and to submit clarifying or correcting statements and other documentation of reasonable length for inclusion with his treatment record.

(3) Nothing in this section shall prohibit the denial of access to records by a child when a physician or other mental health professional believes and notes in the child's medical records that the disclosure would be damaging to the child. In any case, the child has the right to petition the court for an order granting access.

(4) Access to records by the state protection and advocacy system shall be governed by 42 U.S.C. 10801 et seq., as amended.

[16-2428, added 1997, ch. 404, sec. 1, p. 1297; am. 2020, ch. 82, sec. 8, p. 179.]

16-2429. RIGHT TO REPRESENTATION. (1) Every child has the right to counsel to represent him at all proceedings under this chapter and to obtain the advice of an attorney at any time regarding his status under this chapter, at his or his parents' expense. When a child has not retained an attorney and is unable to do so, or the child and his parents are unable to afford one, and proceedings under this chapter have been initiated in court, the court shall appoint an attorney to represent him in court proceedings.

(2) Every treatment facility shall establish a fair procedure for the assertion, resolution, and redress of grievances, and attempt to resolve problems and protect the rights of people treated by the facility. The child shall have the right to have a representative present at these proceedings, but not at public expense.

[16-2429, added 1997, ch. 404, sec. 1, p. 1298.]

16-2430. TRANSPORTATION. Following disposition by the department, it is the responsibility of the county sheriff to transport the person to the treatment facility. The department must notify the sheriff of the designated treatment facility within twenty-four (24) hours of the entry of the department's disposition order. The county and the department shall allow for transportation by a family member or a member of the family and chil-

dren's services regional program staff whenever possible and determined to be in the best interests of the child.

[16-2430, added 1997, ch. 404, sec. 1, p. 1298.]

16-2431. COST OF INVOLUNTARY TREATMENT PROCEEDINGS. All costs associated with the involuntary treatment proceedings, including usual and customary fees of designated examiners, transportation costs and all medical, psychiatric and hospital costs, shall be the responsibility of the parents of the child according to their ability to pay, based on the sliding fee scale established under section 16-2433, Idaho Code, or, if indigent, the county of such child's residence after all personal, family and third party resources including medical assistance as authorized by title XIX of the social security act, as amended, are considered. The department shall assume responsibility for usual and customary treatment costs when the order for involuntary treatment is signed until the involuntary person is discharged and after all personal, family and third party resources are considered in accordance with section 66-354, Idaho Code. For the purposes of this section, "usual and customary treatment costs" includes room and board; support services rendered at a facility of the department; routine physical, medical, psychological and psychiatric examination and testing; and group and individual therapy, psychiatric treatment, medication and medical care which can be provided at a facility of the department or approved by the department. The term "usual and customary treatment costs" shall not include witness fees and expenses for court appearances. Counties shall have no responsibility for costs of voluntary treatment of children under this chapter. Counties shall have no responsibility to pay for the cost of involuntary treatment of children after the court order is signed. This section does not affect the right of any child to receive free mental health or developmental disability services under any publicly supported program or the right of any parent to reimbursement from, or payment on the child's behalf by, any publicly supported program or private insurer.

[16-2431, added 1997, ch. 404, sec. 1, p. 1298.]

16-2432. FALSE STATEMENTS -- PENALTIES. (1) Any person who knowingly and willfully gives false information or takes other wrongful action for the purpose of distorting, corrupting or interfering with the process provided in this chapter shall be subject to a civil fine, and shall be liable for injunctive relief and money damages, in addition to any other liability under law.

(2) Nothing in this chapter shall be construed as diminishing or relieving any person from their duty to report instances of child neglect or abuse under chapter 16, title 16, Idaho Code, or any liability associated with failure to make such reports.

[16-2432, added 1997, ch. 404, sec. 1, p. 1299.]

16-2433. DEPARTMENT RULES. The director is authorized to promulgate rules necessary to implement this chapter that are consistent with its provisions including the development of a schedule of fees to be charged to parents by the department for services, based on the cost of services and the ability of parents to pay.

[16-2433, added 1997, ch. 404, sec. 1, p. 1299.]

16-2434. CONSTRUCTION. (1) As used in this chapter, pronouns refer to both male and female persons equally, and articles refer to singular and plural persons and things.

(2) If any provision of this chapter or its application to any person or circumstance is held invalid, it is the legislative intent that such invalidity not affect other provisions or applications which can be given effect apart from that which is invalidated, and to this end the provisions of this chapter shall be deemed severable.

(3) This chapter is intended as a unified, general chapter covering its subject matter, and accordingly none of its provisions shall be deemed to be repealed by implication by subsequent legislation if such a construction can reasonably be avoided.

[16-2434, added 1997, ch. 404, sec. 1, p. 1299.]